

# **EXHIBIT 5**

**To  
PLAINTIFF'S LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS  
REQUIRING DENIAL OF THE CITY'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

**March 15, 2016**

**Case No. 14-CV-4391**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

NICOLE HARRIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 14 CV 4391
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

The videotaped deposition of JOHN DAY, pursuant to notice and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Carmella T. Fagan, C.S.R., R.P.R., Notary Public within and for the County of Cook and State of Illinois, at 1180 North Milwaukee Avenue, Third Floor, in the City of Chicago, Cook County, Illinois, commencing at 10:09 a.m. on the 12th day of November, 2015.

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1     remember -- I don't know that that's correct. I kind  
2     of think that may have happened, but basically it was  
3     just some general information thing.

4             Q.       Did you -- do you know who sought that  
5     information?

6             A.       I don't -- I don't remember.

7             Q.       Did you ever look through those DCFS  
8     records?

9             A.       I don't believe so.

10            Q.       And during this interview with Stavon  
11     Dancy and Nicole Harris, were they -- were they both  
12     talking, like, an equal amount?

13            A.       I don't -- that's -- I -- I couldn't  
14     judge it as far as equality.

15            Q.       Okay. But they were both talking and  
16     responding to questions?

17            A.       Yeah. Yes.

18            Q.       And you testified earlier that at some  
19     point you made the decision that Nicole Harris and  
20     Stavon Dancy should come back to the station?

21            A.       Yes.

22            Q.       And why did you make that decision?

23            A.       Because of the cause of death, the --  
24     what I -- what I -- what I would say is the demeanor  
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1 of Ms. Harris as opposed to the demeanor -- demeanor  
2 of Stavon, the fact that their -- their most brief  
3 statement just kind of aroused suspicion.

4 And I don't remember much about the  
5 other child at that point, but I knew there was  
6 another child in the house, in the family, however  
7 you want to describe it. And I -- I -- I wanted to  
8 be sure that whatever needed to be done beyond  
9 notifying DCFS about the incident would be done.

10 Q. So I'm clear: So one of the reasons  
11 you said why you believe Nicole Harris and Stavon  
12 Dancy had to come back to Area 5 was the cause of  
13 death?

14 A. Right.

15 Q. What about the cause of death made you  
16 believe there was need for further investigation?

17 A. Well, it's -- it's -- when one -- when  
18 one uses the term "accidental" or "violent," they can  
19 be interchangeable even though there's no criminal  
20 behavior. Strangulation in and of itself is a  
21 violent way to die, even if it's accidental. I  
22 wanted further clarification on that.

23 I also, because you have to be  
24 prudent, particularly when children are involved, you

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1     want to view the crime scene. Part of the  
2     investigation requires you to physically go and look  
3     at the scene, you know, look at the room, try to --  
4     try -- try -- try to put together what you see versus  
5     what people are telling you to determine the  
6     possibility or impossibility.

7             Q.        Okay. And so you're also saying that  
8     you -- you wanted to do further investigation because  
9     you believed Ms. Harris's demeanor was off in this  
10    case?

11            A.        I -- I believed it was unusual.

12            Q.        Okay. It was suspicious?

13            A.        Suspicious.

14            Q.        And you had a desire to question  
15    Ms. Harris further regarding her knowledge  
16    regarding --

17            A.        Yes.

18            Q.        -- his death? But with respect to  
19    Mr. Dancy, you believed his demeanor was not unusual?

20            A.        On face value, it didn't appear  
21    unusual to me.

22            Q.        You wanted -- you wanted the  
23    opportunity to have -- further question Ms. Harris  
24    back at Area 5.

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1 so.

2 Q. May 16th?

3 A. I don't know. I think I went home and  
4 showered and shaved at least once. I'd bet on that.

5 (WHEREUPON, there was laughter.)

6 Q. Okay. Are you currently working  
7 today?

8 A. You mean am I on the payroll or do I  
9 have a job?

10 Q. Do you have a job?

11 A. No.

12 Q. When did you start at the Chicago  
13 Police Department?

14 A. September 8th, 1986.

15 Q. And -- okay. And that's when you went  
16 to the academy?

17 A. Yes.

18 Q. And had you worked in law enforcement  
19 prior to that?

20 A. No.

21 Q. After September 8th of 1986, you  
22 finished the academy, right? And that was how long?

23 A. I think, if I'm not mistaken, at the  
24 time it was -- I think it was -- I think it was 18

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1           A.           It's been referred to as chronic  
2   fatigue. I -- I'm a cancer survivor; I had cancer  
3   surgery in 2003. And the pace of life between  
4   Area 3, which at the time was at Belmont and Western,  
5   versus Area 5 was significant.

6           Q.           Okay.

7           A.           And your -- your caseload was much  
8   lighter. The level of activity in the whole Area,  
9   Area 3, was much less. It was much less demanding.  
10   And without sounding weepy here, I didn't know how  
11   much longer I had because I felt pretty bad. In  
12   fact, that's why I gave it up in 2006 and said, you  
13   know, "I just can't work anymore."

14          Q.           I'm sorry to hear about your  
15   experience.

16          A.           I'm doing better.

17          Q.           Okay. Are you recovered now --

18          A.           Well --

19          Q.           -- or is it in remission?

20          A.           Well, you know, it's one of these  
21   things -- you know, again, I -- I'm neither giving  
22   medical advice or a great history, but the original,  
23   horrific cancer is gone --

24          Q.           Um-hum.  
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1 Q. Okay. What?

2 A. Yeah, something would.

3 Q. And what would refresh your memory?

4 A. A copy of a report, a GPR.

5 Q. The cleared and closed report  
6 indicates that you, Noradin, and Kelly met with  
7 Bartik.

8 A. Yes. I'm sure that's possible. I  
9 don't -- wouldn't argue that point.

10 Q. Does that piece of information refresh  
11 your memory?

12 A. Yes.

13 Q. Okay. So now you remember meeting  
14 with Bartik?

15 A. Yes.

16 Q. So what was your conversation with  
17 Detective Bartik at that time?

18 A. I can only tell you what it would have  
19 been, and I can't state it word for word, you know,  
20 just as -- as it's been done in the past, he would  
21 have been apprised of what the case is, why we  
22 brought these two particular subjects there for a  
23 polygraph examination.

24 It's been my practice not to tell an  
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1 examiner what to ask, just, you know, "Here's what we  
2 got. You know, you ask the questions, and the reason  
3 we're bringing this person here is because. . ."

4 Q. So as you sit here today, you couldn't  
5 tell us what you, Detectives Noradin or Kelly  
6 conveyed to Bartik?

7 A. Only the basic facts of the case is  
8 what we would have conveyed and why it is our concern  
9 to have the subject examined by -- by polygraph.

10 Q. Okay.

11 A. In what words, I can't tell you.

12 Q. How long was this meeting with  
13 Officer Bartik?

14 A. Oh, I don't recall.

15 Q. And you believe reports were given,  
16 but do you know reports were given --

17 A. Well --

18 Q. -- to Bartik?

19 A. -- I don't know if they were reports  
20 or GPRs or so much as what I -- what I've done in the  
21 past is just a handwritten piece of paper saying this  
22 is the subject's name, whatever, and here's the RD  
23 number, you know, the stuff he needs. And usually it  
24 was just done on a GPR, and then there was a verbal

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1 explanation. I don't remember what we did in -- in  
2 this case.

3 Q. In this case, would you have given  
4 him, Mr. Bartik, copies of GPRs of interviews with  
5 Nicole Harris or Stavon Dancy?

6 A. We could have.

7 Q. Because that would obviously have  
8 familiarized him with what they said in the past?

9 A. Sure. That would have been one way of  
10 doing it, if it was.

11 Q. I'm sorry. How long was this meeting  
12 with Officer Bartik?

13 A. I don't recall.

14 Q. Was it more or less than a half hour?

15 A. I don't -- I don't believe it would  
16 have exceeded a half hour by more than -- too much  
17 more than that.

18 Q. So it was about 30 minutes or more?

19 A. Yeah, give or take. Sure.

20 Q. Okay. And at that time, did you share  
21 with him the suspicions you and other detectives had  
22 as to who was responsible in this case for Jaquari  
23 Dancy's death?

24 A. I don't know if we shared that with  
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1           Q.       Have you ever observed an officer use  
2 excessive force in the Chicago Police Department?

3           A.       No.

4           Q.       Have you ever observed an officer  
5 engage in a false arrest in the police department?

6           A.       No.

7           Q.       Have you ever heard of an officer  
8 using excessive force in the Chicago Police  
9 Department?

10          A.       What do you mean, "heard"?

11          Q.       Has another police officer or someone  
12 in the department ever told you that they -- that  
13 they observed an officer using excessive force?

14          A.       No.

15          Q.       Has have you ever heard from someone  
16 in the Chicago Police Department that they observed  
17 an officer falsely arrest someone?

18          A.       No.

19          Q.       Have you ever observed an officer  
20 coercing a confession from a suspect?

21          A.       No.

22          Q.       Have you ever heard of an officer who  
23 said they observed or witnessed an officer coercing a  
24 confession?

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1 A. No.

2 Q. Have you ever known a member of the  
3 Chicago Police Department to report any other member  
4 of the Chicago Police Department for using excessive  
5 force?

6 A. Have I heard it directly?

7 Q. Yeah.

8 A. No.

9 Q. Okay. Have you heard it indirectly?

10 A. Over the years there's been newspaper  
11 articles making such allegations, but no one, sworn  
12 member or anyone else, has ever come up to me and  
13 said, "Let me tell you this story." That's never  
14 happened.

15 Q. Have you ever heard or -- okay. Have  
16 you ever learned of a member of the Chicago Police  
17 Department reporting another member of the Chicago  
18 Police Department for coercing a confession?

19 A. Not to my knowledge. No.

20 Q. Have you ever heard of a member of the  
21 Chicago Police Department reporting another member of  
22 the Chicago Police Department for fabricating  
23 evidence?

24 A. In -- directly? No.  
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1 Q. Again, indirectly?

2 A. Newspaper accounts over, you know,  
3 something that is alleged to have happened.

4 Q. But not from a police source?

5 A. No police officer has ever told me  
6 that, and no one has ever officially told me that  
7 directly.

8 Q. And have you ever observed or  
9 witnessed any member of the Chicago Police Department  
10 fabricating evidence?

11 A. No.

12 Q. Have you ever reported a member of the  
13 Chicago Police Department for any misconduct?

14 A. Yes.

15 Q. What -- under what circumstances?

16 A. Well, I'll make this as -- as brief as  
17 possible. While -- while working a 17th District  
18 Tactical Unit, we stumbled upon a major auto theft  
19 ring that was operating between the states of  
20 Indiana, Wisconsin, Illinois, and internationally.  
21 It was -- it was a very sophisticated operation.

22 During an interview with a -- a  
23 primary suspect who happened to have a handful of  
24 blank titles from Indiana, during an interview with  
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1           Q.       Okay. Other than this instance, have  
2   you ever reported a Chicago Police officer for any  
3   other form of misconduct or any form of misconduct?

4           A.       No.

5           Q.       Do you know of any cases from a  
6   Chicago Police source that said the police department  
7   was responsible for a wrongful conviction?

8           A.       No.

9           Q.       Do you know what the code of silence  
10   is?

11          A.       I've heard about it.

12          Q.       Where have you heard about it?

13          A.       Seeing a lot of great movies --

14          Q.       Oh, yeah?

15          A.       -- reading a lot of great newspaper  
16   stories.

17          Q.       Have you ever heard the code of  
18   silence as being discussed in the Chicago Police  
19   Department?

20          A.       In a rather sarcastic way. Yes.

21          Q.       Do you believe there's a code of  
22   silence in the Chicago Police Department?

23          A.       No, I don't.

24          Q.       Since May of 2005 and prior to meeting  
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